

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 227 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

and

MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SARASPUR MILLS LTD

Versus

COMMISSIONER OF INCOME TAX

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Appearance:

MR JP SHAH for Petitioner

MR MIHIR THAKORE for Respondent No. 1

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CORAM : MR.JUSTICE S.M.SONI and

MR.JUSTICE Y.B.BHATT

Date of decision: 04/10/96

ORAL judgment Per Soni,J.)

The following two questions arise for our consideration in this Reference:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in disallowing the claim of the deduction of interest of Rs.14,838/-paid to the Income Tax Department u/s.220(2)?"

"2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the sum of Rs.19,153/incurred by the assessee for supplying tea, coffee etc. were not in the nature of entertainment expenditure within the meaning of section 37(2B) of the Income-tax Act,1961?"

Question no.1 is referred to us at the instance of the assessee while question no.2 is referred to us at the instance of C.I.T.

The assessee made a claim for deduction of interest paid for delayed payment of tax which came to be disallowed by the C.I.T.A. and confirmed by the Income-Tax Appellate Tribunal. The assessee also made a claim for deduction against expenses incurred for supply of tea, coffee etc. by way of entertainment expenses. Both these questions are now covered by the judgment in the case of SAURASHTRA CEMENT AND CHEMICAL INDUSTRIES LTD. VS. COMMISSIONER OF INCOME-TAX, 213 I.T.R p.523, and in the case of COMMISSIONER OF INCOME-TAX VS. PATEL BROTHERS AND CO.LTD AND OTHERS, 215 I.T.R p.165. respectively. So far as the claim for deduction of interest paid on delayed payment of tax is concerned, this Court in SAURASHTRA CEMENT'S case (Supra) has observed as under:

"The argument apparently appears to be facile but does not stand scrutiny of reason. The mere fact that the interest on the late payment of the tax is compensatory does not make it an expense wholly or exclusively carried out for the purpose of business. The essence of Sec.37 of the Act is that such expenses are wholly laid out or incurred for the purpose of business. If the preliminary liability to be discharged by the assessee is not allowable as expenses laid out or incurred for the purpose of business, ordinarily the interest paid thereon also cannot be considered as expenses laid out or incurred wholly for the purpose of the business. In the case of Prakash Cotton Mills[1993] 201 ITR 684, the Supreme Court was considered with the

interest payable by the assessee on the demand created under the Bombay Sales Tax Act, 1959. The liability incurred on account of sales tax is deductible and any amount paid as interest in the nature of compensation for the late payment of such liability partakes of the character of the original liability and is allowable. So also is the interest paid on the late payment of excise duty or contribution to the provident fund. In each case, the amount paid towards the excise duty or contribution to the provident fund are the expenses allowable to be deducted from the gross profit and, therefore, any amount paid for compensation on delayed payment to the recipient also becomes allowable under section 37(1) of the Act. However, in the present case, the interest is payable on the personal liability of the assessee of the income-tax which is a direct tax and is not a part of the business expenditure. In this connection, it may further be noticed that interest on money borrowed for the payment of the tax was held to be not an allowable expenditure. Reference in this connection be made to the decision of the Supreme Court in the case of Padmavati Jaikrishna (Smt.) v. Addl. CIT [1987] 166 ITR 176. The Supreme Court, affirming the decision of this court in Padmavati Jaykrishna (Smt.) v. CIT [1975] 101 ITR 153 disallowing the claim for deduction of interest on the amounts borrowed to pay taxes and annuity deposits, held as under (at page 179):

" We are inclined to agree with the High Court that so far as meeting the liability of income-tax and wealth-tax is concerned, it was indeed a personal one and payment thereof cannot at all be said to be expenditure laid out or expended wholly and exclusively for the purpose of earning income."

It may be noted that specific provision was required to be inserted in the form of section 80V for the purpose of allowing of such interest as expenditure in the computation of profits and gains from business. But for the special provision made, interest on the capital borrowed for the payment of tax is not allowable expenditure. If that be so on the same principle the interest paid for the late payment of tax cannot be held allowable expenditure as the same cannot be held to be expenditure incurred wholly and exclusively for the purpose of the business. For the aforesaid reasons, we answer question no.2 in the affirmative i.e. in favour of the revenue and against the assessee."

In view of this we answer the first question referred to us in the affirmative i.e. in favour of the

revenue.

So far as the second question is concerned, the same is also covered by the judgment of the Supreme Court in the case of COMMISSIONER OF INCOME-TAX VS. PATEL BROS. AND CO.LTD. (supra). There the Supreme Court has held that the entertainment expenses incurred to meet the bare necessity of the employees are concerned, the assessee is entitled to deduction thereof. So far as such entertainment expenditure incurred for persons other than employees assessee is not entitled to deduction thereof as it cannot be an entertainment expenditure within the meaning of Section 37(2) of the Income Tax Act. In view of this settled legal position, question no.2 is required to be referred back to the Tribunal who shall decide the same in the light of observations made in the judgment of the Supreme Court referred above and in accordance with law. Order accordingly.

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(corrected copy)